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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 961

WILLIAM HETTLEMAN, ET AL.,
Appellants,

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT.

WILLIAM G. CLARK,
Attorney-General of the State of Illinois,
JOHN J. O'TOOLE,
Assistant Attorney-General,
160 North LaSalle Street,
Chicago, Illinois 60601.

JOHN J. STAMOS,
State's Attorney of Cook County,
EDWARD J. HLADIS,
Chief of Civil Division,
RONALD BUTLER,
Assistant State's Attorney,
Attorneys for the County of Cook, a Body Corporate and Politic, Appellee,
500 Chicago Civic Center,
Chicago, Illinois 60602.

ROBERT S. CUSHMAN,
BENNO P. LUDWIG,
Attorneys for the Chicago Law Institute, a Corporation, Edward L. Arkema and John J. O'Brien, Appellees.
Of Counsel:
SPRAY, PRICE, HOUGH & CUSHMAN,
134 South LaSalle Street,
Chicago, Illinois 60603.

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT.

Appellees move the Court, pursuant to Rule 16(1) of the Revised Rules of this Court, to dismiss the appeals herein, or, in the alternative, to affirm the judgments of the Supreme Court of Illinois, on the following grounds:

1. The Jurisdictional Statement does not conform to the requirements of Rule 15 of this Court.
2. The Federal questions sought to be reviewed were not passed on by the Courts of Illinois.
3. The judgments sought to be reviewed rest on an adequate non-Federal basis.

OPINION AND ORDERS BELOW.

This is a consolidated appeal seeking review of certain orders entered by the Illinois Supreme Court on June 20, 1967, and September 14, 1967, respectively. Appellants had sought review in the Illinois courts, pursuant to § 76 of the Illinois Civil Practice Act, of the final decree entered on June 13, 1966, by the Circuit Court of Cook County in Case No. 65 CH 6863. A copy of the said final decree is not included in the Appendix to appellants' Jurisdictional Statement. However, the opinion of Judge Donald J. O'Brien, sitting as chancellor in equity, appears at Appendix A.

The Illinois Supreme Court's order of June 20, 1967, denied the motion of appellants William Hettleman and Palmer D. Edmunds to reconsider that court's order of May 17, 1967. The latter order had denied leave to William Hettleman and Palmer D. Edmunds to appeal from an order of the Illinois Appellate Court entered on February 20, 1967. The Appellate Court's order of February 20, 1967, had denied the petition of William Hettleman and Palmer D. Edmunds for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act. None of the foregoing court orders, other than the order of June 20, 1967, at Appendix B, are reproduced in the appendix to appellants' Jurisdictional Statement.

The order of September 14, 1967, denied the petition of J. Edward Jones for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act. There were no prior proceedings in the Appellate Court on his petition, and he sought to appeal directly from the Circuit Court of Cook County. There were no subsequent proceedings requesting rehearing or reconsideration of the order of September 14, 1967.

The order of the Illinois Supreme Court entered on

June 20, 1967, from which William Hettleman and Palmer D. Edmunds appeal, appears at Appendix B of appellants' Jurisdictional Statement. The order of the Illinois Supreme Court entered on September 14, 1967, from which J. Edward Jones appeals, appears at Appendix C of appellants' Jurisdictional Statement.

JURISDICTION.

Appellants William Hettleman and Palmer D. Edmunds and appellant J. Edward Jones have consolidated their separate appeals from final orders of the Illinois Supreme Court. They rely on Title 28 U. S. C. Section 1257(2) as authority for prosecuting the consolidated appeals to this Court as of right. It is the position of appellees that § 1257(2) does not support the reliance of appellants because the Federal questions sought to be reviewed were not passed on by the Courts of Illinois and also because the judgments sought to be reviewed rest on an adequate non-Federal basis.

It appears that appellants originally intended also to consolidate with their appeals from the Illinois Supreme Court, the petition of Thomas A. McManigal for Writ of Certiorari to issue to the United States Court of Appeals for the Seventh Circuit. The Court of Appeals in that case affirmed two orders of the United States District Court for the Northern District of Illinois, Eastern Division. One of the orders denied petitioner's request to convene a three-judge Federal court to hear and determine the matter. The second order dismissed the action for lack of Federal jurisdiction and for failure to state a claim upon which relief could be granted.

At page 7 of their Jurisdictional Statement, however, appellants concede that § 1257(2) is inapplicable as authority for Thomas A. McManigal to appeal from the judg-

ment of the Court of Appeals, and they state that he will file a separate petition for writ of certiorari. Accordingly, this motion of appellees to dismiss the appeals or affirm the judgment hereafter deals only with appeals of Messrs. Hettleman, Edmunds, and Jones from orders of the Illinois Supreme Court. Thomas A. McManigal filed his separate petition for writ of certiorari on or about December 22, 1967, and the respondents in that case are filing a separate brief in opposition thereto, dealing only with Mr. McManigal's petition for certiorari to issue to review the judgment of the Court of Appeals for the Seventh Circuit.

QUESTIONS PRESENTED.

I.

Does a jurisdictional statement conform to the requirements of Rule 15 where appellants fail to specify the stages at which and the manner in which the Federal questions sought to be reviewed were raised in the proceedings in the State courts and the statement does not quote or summarize the specific portions of the record relied upon to establish jurisdiction by appeal?

II.

Does the jurisdiction of the Supreme Court of the United States attach on appeal from a State judgment where Federal Constitutional questions are not involved and the opinions and orders of the State trial, appellate and supreme courts do not mention, discuss, or pass on any Federal questions?

III.

Does the jurisdiction of the Supreme Court of the United States attach on appeal from a State judgment where the

sole issue presented to the State trial, appellate and supreme courts is the interpretation and application of State court rules and State statutes, and their Federal Constitutional validity is not challenged?

STATUTES INVOLVED.

Title 28 U. S. C. Section 1257:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Illinois Civil Practice Act, § 76 [Repealed September 6, 1967]:

> "(1) No appeal may be taken from a trial court to the Supreme or Appellate Court after the expiration of 60 days from the entry of the order, decree, judgment or other determination complained of, but notice of appeal may be filed after the expiration of said 60 days, and within a period not to exceed 14 months from the entry of the order, decree, judgment or other determination complained of, by order of the reviewing court, entered within the 14 months, upon petition filed and notice given to adverse parties within 1 year from the entry of the order, decree, judgment or other determination, and upon a showing by affidavit that there is merit in appellant's claim for an appeal and that the failure to file notice of appeal within the 60-day period, or the failure properly to prosecute an appeal which was perfected within the 60-day period was not due to appellant's culpable negligence. * * *"

RULES OF COURT INVOLVED.

United States Supreme Court Rule 15:

"1. The jurisdictional statement required by paragraph 2 of Rule 13 shall contain in the order here indicated—

* * * * * *

"(d) A concise statement of the case containing the facts material to the consideration of the questions presented. If the appeal is from a state court, the statement of the case shall also specify the stage in the proceedings in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exceptions, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provisions believed to confer jurisdiction on this court.

"(e) If the appeal is from a state court, there shall be included a presentation of the grounds upon which it is contended that the federal questions are substantial (*Zucht* v. *King*, 260 U. S. 174, 176, 177, 43 S. Ct. 24, 25), which shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and the cases cited to sustain the jurisdiction (subparagraph (b)(iv) hereof), and shall include the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution."

Illinois Supreme Court Rule 35 [Superseded January 1, 1967]:

"(1) Each appellee who desires to prosecute a cross appeal from all or any part of the judgment, decision, order or decree, and each co-party who did not join in the notice of appeal but who desires to join as appellant or to prosecute a separate appeal shall, within 10 days after service upon him of notice of appeal, serve a notice upon each party or attorney or firm of attorneys who signed the notice of appeal, and upon each appellee, person or officer entitled to receive notice of an appeal, and file a copy thereof in the trial court.

. . . . . .

"(3) Any co-party or co-parties not having joined as appellants who, after being served with notice of appeal, do not appear and become a co-appellant by serving and filing a notice of appearance, or who do not file and serve notice indicating an intent to prosecute a separate appeal, are barred from thereafter prosecuting any appeal from the said judgment, order or decree."

Illinois Supreme Court Rule 315 [Effective January 1, 1967]:

"(a) Petition for Leave to Appeal; Grounds. A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed."

STATEMENT.

These are appeals from orders of the Supreme Court of Illinois, entered on June 20, 1967, and September 14, 1967, respectively, denying leave to appellants to appeal from the final decree of the Circuit Court of Cook County, Illinois, entered on July 13, 1966, in Case No. 65 CH 6863. A complaint for declaratory judgment had been filed in that cause on December 10, 1965, by The Chicago Law Institute and Edward L. Arkema and John J. O'Brien, two of its members. The complaint recited why The Chicago Law Institute could not continue to operate in competition with the free law library proposed by the County of Cook for the 29th floor of the new Chicago Civic Center. It named as defendants the Attorney General of the State of Illinois, the County of Cook, and a representative number of members of The Chicago Law Institute, including some who were opposed to the relief which the plaintiffs requested. The prayer for relief requested that the Circuit Court of Cook County, sitting as a court of chancery, apply the assets of The Chicago Law Institute to some similar charitable use. Pursuant thereto, the plaintiffs prayed for approval of an agreement by and between The Chicago Law Institute and the County of Cook to transfer the Institute's library and other assets to the County to be used as or as a part of the County's law library, and for direction authorizing the Institute and the County to carry such an agreement into execution.

The Circuit Court of Cook County, after extensive hearings and briefs had been had in the matter, entered its final decree in Case No. 65 CH 6863 on July 13, 1966. The decree approved the agreement entered into by and between The Chicago Law Institute and the County of Cook providing for the Institute to turn over its law library and other assets to the County, to become the nucleus of the

Chicago Law Institute Law Library, operated and maintained by the County of Cook.

Appellants William Hettleman and Palmer D. Edmunds, who were defendants of record in Case No. 65 CH 6863, sought to appeal from the final decree, but their appeal was dismissed on September 20, 1966, by the Appellate Court of Illinois for failure to comply with Rule 35 of the Illinois Supreme Court Rules. On October 4, 1966, the Appellate Court denied their motion to reconsider dismissal of their appeal. On January 11, 1967, the Appellate Court denied their motion to vacate the order entered on September 20, 1966, dismissing their appeal. On January 24, 1967, William Hettleman and Palmer D. Edmunds petitioned the Appellate Court for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act and Rule 29 of the Illinois Supreme Court Rules. The allowance of a petition for leave to appeal within one year under § 76 requires the dual showing (1) "that there is merit in appellant's claim for an appeal" and (2) that the failure properly to prosecute an appeal (*i.e.*, to appeal within the normal time for appeal) "was not due to appellant's culpable negligence." On February 20, 1967, the Appellate Court denied their petition for leave to appeal under § 76. William Hettleman and Palmer D. Edmunds appealed from the Appellate Court's order of February 20, 1967, and on May 17, 1967, the Supreme Court of Illinois affirmed that order and again denied their petition for leave to appeal under § 76. On June 20, 1967, the Supreme Court denied their motion to reconsider its denial of their petition for leave to appeal. William Hettleman and Palmer D. Edmunds now seek review in this Court of the order entered on June 20, 1967, by the Illinois Supreme Court.

Appellant J. Edward Jones, another defendant of record in Case No. 65 CH 6863, also sought to appeal from the final decree of July 13, 1966. His appeal was similarly

dismissed on September 15, 1966, for failure to comply with Rule 35 of the Illinois Supreme Court Rules. The order of dismissal was entered by the Illinois Supreme Court, to which J. Edward Jones had sought appeal directly from the Circuit Court of Cook County. Thereafter, on July 13, 1967, J. Edward Jones petitioned the Supreme Court for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act and Rule 29 of the Illinois Supreme Court Rules. In order for his petition for leave to appeal within one year under § 76 to be allowed, it was necessary for J. Edward Jones to show (1) "that there is merit in appellant's claim for an appeal" and (2) that the failure properly to prosecute an appeal (*i.e.*, to appeal within the normal time for appeal) "was not due to appellant's culpable negligence." On September 14, 1967, the Supreme Court of Illinois denied his petition for leave to appeal under § 76. J. Edward Jones now seeks review in this Court of the order entered on September 14, 1967, by the Illinois Supreme Court.

ARGUMENT.

Appellants' Jurisdictional Statement is deficient in that it fails to conform to the requirements of Rule 15(1)(d) and (e) for demonstrating how the federal questions sought to be reviewed were raised and passed upon in the courts of Illinois, and in that it fails to establish the jurisdiction of this Court to hear the matter on direct appeal from the Illinois Supreme Court pursuant to Title 28 U. S. C. Section 1257(2).

I.

THE JURISDICTIONAL STATEMENT FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 15(1)(d) AND (e) OF THE REVISED RULES OF THIS COURT.

Rule 15 of the Revised Rules of this Court sets out at some length just what is to be included in the Jurisdictional Statement. Thus if the appeal is from a State court, the Statement of the Case is to include a description of the manner in which the Federal question was presented. The showing as to how the Federal question was raised and passed on in the State courts is to be made with considerable particularity. In the absence of a sufficient showing thereof, this Court may dismiss the appeal.

Appellants' Jurisdictional Statement fails to conform to the requirements of Rule 15(1)(d) and (e) of the Revised Rules of this Court, and therefore is insufficient to establish the right of appellants' to direct appeal to this Court from the Illinois Supreme Court, for the following reasons:

1. Appellants have failed to specify the stages in the proceedings in the Circuit Court of Cook County, in the Illinois Appellate Court, and in the Illinois Su-

preme Court at which, and the manner in which, the Federal questions sought to be reviewed were raised.

2. Appellants have failed to specify the method of raising the Federal questions sought to be reviewed.

3. Appellants have failed to specify the way in which the Federal questions sought to be reviewed were passed upon by the Circuit Court of Cook County, the Illinois Appellate Court, and the Illinois Supreme Court.

4. Appellants have failed to quote those portions of the record and have failed to refer to those places in the record containing the matters which allegedly support appellants' assertion that the rulings of the State courts are of a nature to bring the case within Title 28 U. S. C. Section 1257(2) conferring jurisdiction on this Court.

5. Appellants have failed to show how the nature of this case or the nature of the rulings of the State courts are such as to bring the case within Title 28 U. S. C. Section 1257(2).

6. Appellants have failed to cite any cases whatever in support of sustaining the jurisdiction of this Court.

7. Appellants have failed to state any meritorious reasons demonstrating why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Accordingly, appellees respectfully submit that appellants' Jurisdictional Statement is insufficient, under the Revised Rules of the Court, to demonstrate jurisdiction to hear the Federal questions sought to be reviewed on direct appeal from the Illinois Supreme Court. Therefore this Court should not take jurisdiction to review the orders of

the State court, and this appeal should be dismissed or, in the alternative, the orders of the Illinois Supreme Court should be affirmed.

II.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT PASSED ON BY THE COURTS OF ILLINOIS.

Appellants contend that both the County Law Library Act of May 5, 1961, 1965 Ill. Rev. Stats., Ch. 81, § 81; and a resolution of November 23, 1965, by the Board of Commissioners of Cook County, authorizing execution by the County of a proposed agreement with The Chicago Law Institute, were unconstitutional. Appellants contend further that they have been denied due process of law. They rely on Title 28 U. S. C. Section 1257(2) to establish their right of direct appeal to this court from orders of the Illinois Supreme Court. But § 1257(2) does not support appellants' reliance, and it does not afford any basis for direct appeal in this case.

Appellants appear to claim that the statute and the resolution in question are Constitutionally invalid because they constitute an impairment of contract, the contract being either a certain contract of February 18, 1857, between The Chicago Law Institute and its members, or a certain contract of March 11, 1958, between the Institute and the County of Cook. Neither contract, however, is pleaded or reproduced in an Appendix to Appellants' Jurisdictional Statement.

The resolution of the Board of Commissioners of Cook County does not amount to an ordinance or a law impairing the obligation of a contract. *Des Moines* v. *City Ry.*, 214 U. S. 179 (1909). Furthermore, appellants' conclusory allegations of impairment of contract and denial of due process of law, unsupported by any allegations of fact,

are insufficient to establish the jurisdiction of this Court to hear and determine a direct appeal under § 1257(2). See *Kregger* v. *Posner*, 248 F. Supp. 804 (E. D. Mich, S. D. 1966). Dispositive of the question of the jurisdiction of this Court to hear a direct appeal of the cause pursuant to § 1257(2), however, is the plain fact that nowhere in any of the proceedings had in this matter in any of the courts of Illinois have any Federal rights, privileges or immunities been considered, passed on or disposed of. The only basis for this Court's jurisdiction on direct appeal under § 1257(2) is the fact that the highest State court sustains the validity of a State statute against a challenge on Federal Constitutional grounds. But the Federal Constitutional questions which appellants seek to have reviewed on this appeal have never been passed on by the trial court or the appellate court or the Illinois Supreme Court. Title 28 U. S. C. Section 1257(2) therefore is inapplicable to this case and cannot establish the jurisdiction of this Court to hear the matter on direct appeal.

The burden is clearly on appellants to demonstrate that a Federal question was presented to the State court and that a decision on such a question was necessary to a determination of the cause. Thus where the highest State court delivers no opinion in rendering its judgment, and both Federal and non-Federal questions have been raised, this Court ordinarily presumes that the State court's decision is based on a non-federal ground, and jurisdiction will be declined. *Lynch* v. *New York ex. rel. Pierson*, 293 U. S. 52, 54-55 (1934); *Adams* v. *Russell*, 229 U. S. 353, 358 (1913); *Woods* v. *Nierstheimer*, 328 U. S. 211 (1946); *Phyle* v. *Duffy*, 334 U. S. 431 (1948). Where adequate State grounds are asserted and appear reasonable, "petitioner, in order to establish [the Court's] jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." *Durley* v. *Mayo*, 351 U. S.

277, 281 (1956), *reh. den.*, 352 U. S. 859 (1956). The burden of establishing jurisdiction is not met if "it appears that the judgment [below] *might* have rested upon a non-federal ground." *Durley* v. *Mayo*, 351 U. S. 277, *reh. den.*, 352 U. S. 859 (1956); *Stembridge* v. *Georgia*, 343 U. S. 541, 547 (1952); *Ellis* v. *Dixon*, 349 U. S. 458, 459 (1955).

Appellants William Hettleman and Palmer D. Edmunds, recognizing the vulnerability of their direct appeal to dismissal for want of Federal jurisdiction, applied to the Illinois Supreme Court for certification that decision of Federal claims was necessary to its disposition of the case. That court, in considering appellants' motion for certificate on review, had before it their 3-page motion, the 5-page affidavit of William Hettleman, and a 19-page brief in support of appellants' request. On September 14, 1967, the Illinois Supreme Court denied the motion of appellants Hettleman and Edmunds. That court thereby declined to certify that its decision in the case had required the determination of any Federal claims.

Appellees respectfully submit that the Illinois court's denial of appellants' motion for certificate on review shows that the decisions of the Illinois Supreme Court of which appellants now seek review are based solely on adequate non-Federal grounds. The order of the Illinois Supreme Court entered on June 20, 1967, denied the motion of appellants William Hettleman and Palmer D. Edmunds for reconsideration of that court's prior order denying their petition for leave to appeal from the final decree entered in Case No. 65 CH 6863. The order of the Illinois Supreme Court entered on September 14, 1967, denied the petition of appellant J. Edward Jones for leave to appeal from the final decree entered in Case No. 65 CH 6863. Both orders were entered without opinion by the Illinois Supreme Court. Neither order mentions, discusses or passes on any such contentions as appellants make in this Court. Clearly,

neither order mentions, discusses, or passes on Constitutional or any other Federal questions.

Accordingly, appellees respectfully submit that the proceedings in the Illinois courts clearly have not involved questions of the Constitutional validity of any State statute, and that appellants therefore cannot establish Federal jurisdiction under § 1257(2) based on a claim that the State court has sustained the validity of a State statute against challenge on Federal grounds. This appeal should be dismissed or, in the alternative, the orders of the Illinois Supreme Court should be affirmed.

III.

THE JUDGMENTS SOUGHT TO BE REVIEWED REST ON AN ADEQUATE NON-FEDERAL BASIS.

The orders of the Illinois Supreme Court entered on June 20, 1967, and September 14, 1967, respectively, from which appellants seek to appeal to this Court, clearly rest on appellants' failure to comply with the applicable provisions of the Illinois Civil Practice Act and the Illinois Supreme Court Rules. Thus the orders which appellants seek to have reviewed rest on adequate and independent non-Federal grounds of decision.

The rulings of the Illinois Supreme Court are grounded on State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules. So long as the local procedure does not discriminate against the raising of Federal claims and has not been used to stifle a Federal claim or to evade vindication of Federal rights, this Court will respect local procedural requirements. See *Davis* v. *Wechsler*, 263 U. S. 22, 24-25 (1923). Accordingly, the State court judgments are *based* on a non-Federal ground, and the non-Federal ground is *adequate* to support the State court judgment. Therefore this Court lacks juris-

diction under Title 28 U. S. C. Section 1257(2) to review these cases. When "there can be no pretense that the [State] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U. S. 222, 225 (1921); *Wolfe* v. *North Carolina*, 364 U. S. 177, 195 (1960); see also *Atlantic Coast Line R. R. Co.* v. *Mims*, 242 U. S. 532, 536-537 (1917); *Parker* v. *Illinois*, 333 U. S. 571, 575 (1948).

The issues in the appellate proceedings prosecuted in the Illinois courts by William Hettleman, Palmer D. Edmunds, and J. Edward Jones have related wholly to questions of whether or not compliance has been had with the Illinois Supreme Court Rules and the Illinois Civil Practice Act governing appeals. The record of determinations to date includes the following:

1. On September 15, 1966, the Illinois Supreme Court dismissed the appeal of J. Edward Jones, presumably for his failure to comply with former Illinois Supreme Court Rule 35.

2. On September 20, 1966, the Illinois Appellate Court dismissed the appeal of William Hettleman and Palmer D. Edmunds, presumably for their failure to comply with former Illinois Supreme Court Rule 35.

3. On February 20, 1967, the Illinois Appellate Court denied the petition of William Hettleman and Palmer D. Edmunds for leave to file notice of appeal under former § 76 of the Illinois Civil Practice Act, presumably on the grounds that they had not met the statutory requisites for granting such relief.

4. On May 17, 1967, the Illinois Supreme Court denied the petition of William Hettleman and Palmer D. Edmunds for leave to appeal from the order of

CONCLUSION.

Appellees respectfully submit that the Federal questions which appellants seek to have reviewed were not passed on by the courts of Illinois; and that the judgments of the Illinois Supreme Court which appellants seek to have reviewed rest on an adequate non-Federal basis. Therefore the appeal should be dismissed or, in the alternative, the judgments below should be affirmed.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney-General of the State of Illinois,

JOHN J. O'TOOLE,
Assistant Attorney-General,

160 North LaSalle Street,
Chicago, Illinois 60601.

JOHN J. STAMOS,
State's Attorney of Cook County,

EDWARD J. HLADIS,
Chief of Civil Division,

RONALD BUTLER,
Assistant State's Attorney,
Attorneys for the County of Cook, a Body Corporate and Politic, Appellee,

500 Chicago Civic Center,
Chicago, Illinois 60602.

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Of Counsel:
SPRAY, PRICE, HOUGH & CUSHMAN,
134 South LaSalle Street,
Chicago, Illinois 60603.